

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X
ROBERTO DEJESUS 12A0084,
Plaintiff,

V.

COMPLAINT
Jury Trial Demand

CAPTAIN CHUTNEY,
DONALD VENETTOZZI,

17 CV 982 W

Defendants.
-----X

JURISDICTION AND VENUE

1. This is a Civil Rights Action seeking and damages to defend and protect the rights guaranteed by the Constitution of the United States. This action arises under and is brought pursuant to 42 U.S.C. Section 1983 to remedy the deprivation, under color of state law, of rights guaranteed by the Eighth Amendment of the United States Constitution. This Court has jurisdiction over this action pursuant to 28 U.S.C. Sections 1331, 1343, and 2201.

2. Venue properly lies in this District pursuant to 28 U.S.C. Section 1391(b), because the events giving rise to this cause of action occurred at Attica Correctional Facility in Attica, New York, which is located within the Western District of New York.

PARTIES TO THIS ACTION

-PLAINTIFF-

3. Plaintiff Roberto Dejesus # 12A0084 is a prisoner confined in Attica Correctional Facility, located at 639 Exchange Street, Attica, New York 14011.

4. Plaintiff Roberto Dejesus is, and was at all times mentioned herein, a citizen of the United States and resident of the state of New York.

-DEFENDANTS-

5. Defendant Chutney is employed as Deputy of Security at the Auburn Correctional Facility. He is and was at all relevant times an employee of the prison.

6. Defendant Venettozzi is employed as Acting Director of Special Housing Unit inmate disciplinary program. He is responsible for all administrative appeals of all correctional facilities.

PREVIOUS LAWSUITS FILED BY PLAINTIFF

7. Plaintiff has filed no other lawsuits dealing with the same facts involved in this action or otherwise relating to his imprisonment.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Plaintiff has exhausted his administrative remedies by appealing his claim.

STATEMENT OF CLAIM

9. At all relevant times herein, defendants were “persons” for purposes of 42 U.S.C. Section 1983 and acted under color of law to deprive plaintiff of his constitutional rights, as set forth more fully below.

STATEMENT OF FACTS

10. On February 1, 2015, the Plaintiff was an offender at Auburn Correctional Facility in Cayuga County, New York. As a result of an incident on February 1st, 2015, Plaintiff was, after an investigation on February 11th, 2015, charged with violating the following prison disciplinary rules:

110.10 Assault; 100.13 Fighting; 104.11 Violent Conduct; 104.13 Creating a Disturbance; 113.10 Weapon.

11. The misbehavior report (MR) describes the incident giving rise to the above charges as follows: on February 1, 2015, based on an ongoing investigation through several reliable confidential sources and interviews, you were positively identified as the perpetrator of serious assault on another inmate. The assault took place at the gym door entrance. The inmate was stabbed from behind while waiting to gain entrance into the gym and medical determined that the weapon was a stabbing type weapon that was not recovered. At this point you were observed by confidential sources throwing the weapon and running from the area.

12. Upon information and belief, the plaintiff alleges that the (MR) is entirely defective as it does not describe with sufficient particularity the individual involved in the incident as required by the regulations. When these details are not available, the notice should explain that the information is unknown. (See Exhibit A-Misbehavior report dated Feb. 1, 2015).

13. The description in the report is controverted and contradicted by a report written by Sgt. Rogofsky indicating that the incident was not witnessed, was not on video tape, and the victim Mr. Ramsey #91B2334 did not identify the plaintiff as his assailant (See exhibits - To/From memo by Sgt. Rogosky and Exhibit C- Unusual Incident report).

14. In the MR there is no mention or description of a fight or disturbance. However, two charges of such were added to the report to simply bolster the charges against the plaintiff even though such charges are unsubstantiated by the facts of the incident rendering the report inadequate to provide notice of the charges.

15. The MR contains no description of or identity of any inmate that plaintiff was allegedly

involved in a fight with, the plaintiff possessed no injuries that would be consistent with a fight or physical altercation (See Exhibit A).

16. Upon information and belief, the report gives only a theorized description of what the investigators believed to have occurred after piecing a story together leaving no factual specificity to permit the hearing officer to independently assess the facts.

17. Upon information and belief, the confidential source in this matter is not confidential but a known adversary of the plaintiff with an established motive to frame the plaintiff that was not investigated by the hearing officer.

18. On February 5, 2015, an inmate that locked in C-14-32 cell at ACF named Mooney # 06A3386, also witnessed who refused to testify stated to Sgt. Graf, the supervisor at that time in C-Block that the plaintiff whom at that time locked in C-14-18 cell took his personal radio out his cell and also told Sgt. Graf that the plaintiff assaulted Mr. Ramsey #91B2334 who at that time locked in C-14-36 cell at the gym door entrance on February 1, 2015.

19. As a result of the contrived information provided by inmate [Mooney], Sgt. Graf authorized three (3) officers to search the Plaintiff cell which uncovered no radio, weapon, or evidence linking Plaintiff to either incident after Mr. Mooney's failed attempt to have the plaintiff removed from the cell block due to a personal vendetta, he requested to be placed in protective custody (PC) which entry is only authorized by either claiming to be under threat of danger or by providing information to the facility administration. Mr. Mooney was the, moved to A-block then to E-block where (PC) is housed.

20. On February 6, 2015, the Plaintiff was placed under 72 hour investigation keeplock status and on February 9, 2015, after 72 hours, no report of wrong doing as issued to the Plaintiff.

21. On February 10, 2015, Sgt. Graf came with two officers to escort the plaintiff to special housing unit (SHU) due to a misbehavior report which alleged that Plaintiff assaulted Mr. Ramsey # 91B2334.

22. On February 11, 2015, the Plaintiff was served with the misbehavior report based on the alleged confidential information provided obviously by Mr. Mooney. However, during the hearing, all of the confidential information was entered into the record via off the record testimony of Correction Officer (CO) M. Gould.

23. The hearing officer (HO) defendant Captain Chutty relied on the hearing confidential information to find the Plaintiff guilty and made no mention in the record that he would be considering such confidential information and why it would remain confidential (See Exhibit - D Disposition).

24. Defendant Captain Chutty did not interview the actual confidential source directly in person or over the phone, rendering the testimony of C.O. Gould concerning the confidential information as third party hearsay which was in itself, insufficiently detailed to allow an independent assessment of the confidential information received and the record is devoid of any such assessment to gauge the reliability or credibility of the information.

25. A review of the testimony given by C.O. Kirk and the law library officer V on February 26, 2015 indicates that it was physically impossible for the Plaintiff to have committed the assault. As the incident occurred at approximately 1:45 p.m., the confidential source stated that he observed the Plaintiff commit the assault and run away from the area tossing the weapon. However, C.O. V, the law library officer, stated in his testimony that he saw the Plaintiff in the law library after the shift change at 2:00 pm.

26. The entrance to both the gym door and the law library, are in two opposite directions. Therefore, the Plaintiff could not have ran one direction, tossed the weapon and then be spotted on the other side in the library. The entire area is a controlled location under video surveillance, the video of the area shows no incident and no weapon was recovered in the area where the informant said it was tossed. (See Exhibit B).

27. The information provided by the alleged informant is contradicted by the officer's on post in the area of assault testimony. If the assault occurred at the gym door entrance as written on the MR then the officer "Kirkwood" would have witnessed it as that was his area to observe, the inmates waiting on line for entry into the gym and library.

28. After the assault at approximately 1:50 p.m., the entire area was frozen for a search of the area, and all inmates in that area was searched. The lock down prevented entry or exit from the area of the assault and the Plaintiff was in the library and not in any other area of the facility as the informant alleges.

29. Officer Corkwood testified that it was his duty to monitor the gym door entrance by standing inside looking out the line coming in. When the plaintiff asked officer Corkwood did he see Plaintiff fighting or involved in any violent conduct, assault, etc., Officer Corkwood stated "no". See Exhibit E- Testimony of Corkwood).

30. When the Plaintiff asked officer Corkwood would it be noticeable for him being at the gym door entrance post to see two inmates fighting? Officer Corkwood said "yes".

31. A review of page of the requested documents list and witness questions submitted to the tier assistant indicates that the Plaintiff was in fact inside the library already at the time of the assault and took out the book titled: "OSOBO Speaking to the Spirit of Misfortune". This is consistent with

the law library officer testimony that he observed the Plaintiff inside the general library on the day of the incident in that approximate time frame. Clearly, the informant identified the wrong man because one person cannot be at two places at one time (See Exhibit G).

32. The hearing officer disregarded these factual inconsistencies in the informants information provided to the investigating officer, illustrating partiality on his behalf in the face of testimony from officers posted in the area who did not see the Plaintiff involved in any incident.

33. Upon information and belief, on February 12, 2015 at 1:30 p.m., the Plaintiff was provided with an inmate assistance C.O. Stanton, and requested specific documents and requested four potential inmate witnesses to assist with Plaintiff's defense. (See Exhibit G-Assistance Form). Two Witnesses agreed to testify on the Plaintiffs behalf and inmates Mooney #06A3386 and the victim Ramsey #91B2334 both refused to testify and gave no reason why they refused to testify on Plaintiffs behalf.

34. On February 18, 2015, the plaintiffs disciplinary hearing commenced and Plaintiff reasserted his initial request to call both the victim Mr. Ramsey and Mr. Mooney as witnesses on his behalf and stressed to the hearing officer the value and relevance of their testimony. The H.O. replied stating: "they refused and cannot force them to testify." The Plaintiff then noted his objection on the record.

35. The plaintiff then requested the two witnesses again but this time he specifically asked the H.O. defendant Chutty : "Captain, would it be possible that the two inmates I requested as witnesses *** be questioned by you because as you know these witnesses support my position in the subject matter of the misbehavior report."

36. The H.O. denied the request and failed to probe why the witnesses refused and failed to

provide the Plaintiff with a witness denial form/witness refusal form as required by the regulations. However, witness interview notices were provided for all the other witnesses even though the form itself states that in the event of a denial a witness refusal form must be provided (See Exhibit - I witness interview notice).

37. At the conclusion of March 26, 2015, the H.O. found the Plaintiff guilty on all charges and a penalty of seven hundred and thirty days confinement as well as loss of privileges. And three hundred and sixty-five days recommended loss of good time (See Exhibit J- hearing disposition sheet rendered dated March 26, 2015).

38. Though no evidence whatsoever was offered to substantiate that the Plaintiff actually committed the assault. The only evidence specifically linking the Plaintiff to the incident was insufficiently detailed hearsay entered into the record by a third party whom had no actual direct knowledge of the facts and the H.O. assessed the informant's reliability and credibility solely through the testimony of the investigating officer with no direct contact with the direct contact with the informant or the confidential sources to allow him to make an independent assessment of the information received. Plaintiff remained in S.H.U. for a total of eighteen months from February 6, 2015 until August 23, 2016 and released from the three hundred seventy days penalty imposed due to good behavior.

39. Plaintiff did a pro-se administrative appeal which was filed on April 4, 2015 appealing the defendant Donald Venettozzi who is the Acting Director of Special Housing Unit Inmate Disciplinary Program, citing reversal grounds so that the defendant could correct and cure the illegal acts, but the defendant failed to fix the problem.

40. By notice dated June 11, 2015, Plaintiff was notified that the Tier III hearing was

reviewed and affirmed on June 11, 2015 by the defendant Donald Venettozzi (See Exhibit I-review of Superintendent's hearing.

41. Plaintiff commenced an Article 78 proceeding on July 17, 2015 and it appearing from the pleadings that a question of substantial evidence has been raised requiring transfer of the proceeding to the Appellate Division Third Department, per order from the Third Department dated December 15, 2016, the Superintendent's hearing was reversed and remitted for a new hearing (See Exhibit -K Decision by Appellate Division).

42. At the Plaintiff's rehearing it was determined that there was not sufficient factual or substantial evidence to warrant a finding of guilty of the charges. It is well settled that a written misbehavior report by itself can constitute substantial evidence of an inmates misconduct, therefore as all issues of credibility are for a hearing officer to determine. H.O. found that the misbehavior report on its face was insufficient to warrant a finding of guilt against the Plaintiff and dismissed all the charges against the Plaintiff.

LEGAL CLAIMS

43. Plaintiff realleges and incorporates by reference paragraph 1 through 43.

44. FIRST CLAIM: On March 26, 2015, defendant Captain Chutty violated Plaintiff's Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution require that an inmate be permitted to call witnesses in his defense provided that doing so will not be unduly hazardous to institutional safety or correctional goals. The Fourteenth Amendment to the Constitution provides that no state shall ... deprive any person of life, liberty, or property without due process of law. U.S. Const. Amend. XVI, § 1. Although prison inmates necessarily have their liberty severely curtailed while incarcerated they nonetheless entitled to certain procedural protection when

disciplinary actions subject them to further liberty deprivations such as loss of good time credit or special confinement that imposes an atypical hardship.

45. Defendant confined Plaintiff and unlawfully deprived Plaintiff of his liberty and freedoms he would have otherwise enjoyed had not it been for the defendants violation of Plaintiff's rights.

46. The confinement was unconstitutional and also infringed upon the rights of Plaintiff and it amounted to cruel and unusual punishment, violating the Plaintiff Eighth and Fourteenth Amendment due process rights.

47. Defendant's wrongful confinement was very unlawful and intended to restrict Plaintiff person from otherwise privileges enjoyed by all other inmates which include commissary, phone, school, programs, and activities associated to cruel and unusual punishment (unduly hardship) in violation of the Eighth Amendment of the United States Constitution. The rights to due process of law (the equal protection clause) protected by the Fourteenth Amendment of the United States Constitution.

48. Defendant(s) have deprived Plaintiff of his civil , constitutional, and statutory right and have conspired to deprive Plaintiff of such rights under 42 U.S.C. § § 1983 and 1985 and New York State Constitution.

SECOND CLAIM

49. Plaintiff realleges and incorporates by reference paragraph 43 through 49.

50. Defendant, Donald Venettozzi participated directly in the constitutional violation when Plaintiff appealed the defendant Captain Chutty ruling to Defendant Venettozzi, Director of Special Housing, citing reversible grounds so that the defendant could correct and cure the illegal acts, but the defendant Venettozzi failed to fix he problem.

51. Defendant Venettozzi violated due clause of the Fourteenth Amendment of the United States Constitution when Plaintiff was deprived of liberty within the meaning of wrongfully confine to special housing unit for eighteen months.

52. Defendants of the state of New York it's agents, servants, officers and officials acting under the color of state law in the scope and furtherance of their employment.

53. Plaintiff Roberto Dejesus has no plain, adequate, of complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of defendants unless this court grants the declaratory and injunctive relief which Plaintiff seeks.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment granting Plaintiff.

54. A declaration that the acts and omissions described herein violated Plaintiff Due Process rights of the Fifth and Fourteenth Amendments of the United States Constitution.

55. Compensatory damages in the amount of \$150.00 dollars for each day Plaintiff spent wrongfully confined to special housing for the past eighteen months against each defendants.

56. Punitive damages in the amount of \$100.00 against each defendant.

57. A jury trial on all issues triable by jury.

58. Plaintiff's costs in preparing and filing this suit.

59. Any additional relief this court deems just, proper, and equitable.

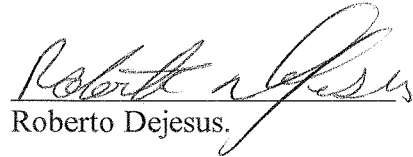
Date: Sept. 19th, 2017.

Respectfully Submitted,


Robert Dejesus

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on Sept. 19th, 2017.


Roberto Dejesus.

A

NOTE: Fold back page 2 on dotted line before completing below.

Dist: WHITE - Disciplinary Office CANARY - Inmate(After review)

B

PAGE 1

STATE OF NEW YORK
DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION
UNUSUAL INCIDENT REPORTPRINTED AT
02/11/15 10:01 AM

AUBURN GENERAL

FAC CODE 010

FAC LOG# 150035

CCC# 240490

INCIDENT DATE 02/01/15 TIME 01:45 PM LOCATION YARD MAIN YARD

TELEPHONE DATE 02/01/15 TIME 05:31 PM

PERSON CALLING LT T.QUINN
PERSON RECEIVING CAPT MICHAEL SPINA

REPORT DATE 02/09/15 PERSON REPORTING LT T. QUINN

USE OF FORCE NO WEAPON USED YES WORKPLACE VIOLENCE NO

ASSAULT (02) 01
ON INMATE

DESCRIPTION:

INMATE RAMSEY 91B2334 C-14-36 REPORTED TO CO.SLAYTON AT THE WIRE GATE THAT HE HAD BEEN CUT.CO.SLAYTON OBSERVED A PUNCTURE TYPE WOUND RIGHT SIDE OF THE FACE.SGT.ROGOFKY NOTIFIED.INMATE ESCORTED TO FIRST AID FOR TREATMENT.INMATE STATED THAT HE WAS CUT AT THE GYM ENTRANCE.

EVENTS CAUSING:

INMATE RAMSEY 91B2334 REPORTED TO CO SLAYTON AT THE WIRE GATE THAT HE HAD BEEN CUT AT THE GYM ENTRANCE.

ACTION TAKEN:

INMATE WAS TREATED FOR A 1" FULL THICKNESS LACERATION RIGHT CHEEK, 1" PUNCTURE ON LEFT SIDE ROOF OF THE MOUTH.INMATE TRANSPORTED TO AUBURN HOSPITAL VIA STATE VAN FOR FURTHER TREATMENT.AREA OF THE INCIDENT FRISKED, NCF.INMATE'S CELL FRISKED PER SGT.ROGOFKY,NCF.INVOLUNTARY PROTECTIVE CUSTODY RECOMMENDATION FILED.INMATE TO BE HOUSED IN THE FACILITY HOSPITAL UPON RETURN TO THE FACILITY.ALL REPORTS FILED.OD STWD.FESTA NOTIFIED.

PAGE 2

STATE OF NEW YORK
DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION
UNUSUAL INCIDENT REPORTPRINTED AT
02/11/15 10:01 AM

AUBURN GENERAL

FAC CODE 010

FAC LOG# 150035

CCC# 240490

INCIDENT DATE 02/01/15 TIME 01:45 PM LOCATION YARD MAIN YARD

USE OF FORCE NO

WEAPON USED YES

WORKPLACE VIOLENCE NO

ACTION TAKEN:

(CONTINUED)

INMATE INJURIES ARE CONSISTENT WITH A STABBING TYPE WEAPON.

MEDICAL REPORT:

1" FULL THICKNESS LACERATION RIGHT CHEEK. 1" LAC LEFT SIDE ROOF OF MOUTH.
ADDENDUM 2/1/15 @ 8:00PM: PER ER, LAC THROUGH RIGHT CHEEK, THROUGH GUM,
TONGUE UPPER LEFT HARD AND SOFT PALATE.

E. SMITH

/NURSE

EXAMINER NAME/TITLE

02/01/15 01:45 PM

EXAM DATE/TIME

PROPERTY DAMAGE:

N/A

NOTIFICATION (FAMILY):

N/A

NOTIFICATION (POLICE/OTHER):

N/A

PAGE 3

STATE OF NEW YORK
DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION
UNUSUAL INCIDENT REPORTPRINTED AT
02/11/15 10:01 AM

AUBURN GENERAL

FAC CODE 010

FAC LOG# 150035

CCC# 240490

INCIDENT DATE 02/01/15 TIME 01:45 PM LOCATION YARD MAIN YARD

USE OF FORCE NO WEAPON USED YES WORKPLACE VIOLENCE NO

INMATE INFORMATION:

RAMSEY, MICHAEL

91B2334

DOB 05/27/1965 ETHNIC- BLACK

GEN INCIDENT - SPECIFIC INCIDENT
ASSAULT - ON INMATEROLE
VICTIM UNR/STABNGWEAPONFORCEINJURY
PUNCTURE

EMPLOYEE INFORMATION:

ROGOFSKY, CHRISTOPHER J

SGT

GEN INCIDENT - SPECIFIC INCIDENT
ASSAULT - ON INMATEFORCEINJURYDEGREE

SLAYTON, KEVIN R

CO

GEN INCIDENT - SPECIFIC INCIDENT
ASSAULT - ON INMATEFORCEINJURYDEGREE

DS1 GRAFTON ROBINSON
ACTING SUPERINTENDENT02/11/15
DATE

C

State of New York-Department of Correctional Services
Auburn Correctional Facility
Inter-Departmental Communication

To: Lt. Quinn
From: Sgt. Rogofsky
Subject: Ramsey, Michael 91B2334 (C-14-36) U.I.15-0035
Date: 2/1/15

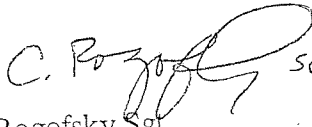
Sir,

On the above date at approximately 1:45 P.M. we had just completed running afternoon recreation. Inmate Ramsey, M. 91B2334 (C-14-36) reported to the wire gate Officer Slayton, K. that he had been "cut." Officer Slayton observed blood on the face of Ramsey and he was also spitting up blood. I responded to the area with Officer Tanner and we escorted Inmate Ramsey to first aid without incident. Inmate Ramsey was seen by R.N. Smith and treated for a one inch full thickness laceration to his right cheek. Inmate Ramsey was sent to Auburn Community Hospital via state van for further treatment.

Inmate Ramsey submitted a urine sample and his cell was frisked with no contraband found. A Involuntary Protective Custody Request was submitted and all other pertinent paperwork has been completed.

The incident was not witnessed. I interviewed Inmate Ramsey and he stated he was at the gym entrance waiting to enter when he was cut by an unidentified Inmate. The area of the incident was frisked with no contraband recovered. I checked with A-Roof post and nothing was seen on video.

Respectfully,


C. Rogofsky Sgt.

D

02/11/15
DCP004STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
SUPERINTENDENT HEARING DISPOSITION RENDERED

DIN: 12A0084 NAME: DEJESUS, ROBERTO

HEARING DATE: 3/26/15

A. STATEMENT OF EVIDENCE RELIED UPON:

misbehavior reports written by Co. Grubel and Co Knight. The testimony of Co Grubel, Co T. McCarthy, Co Farmer, Co Grady, Co Wright, Co Vanderwaal, Co Luntz, Co Knight, Co Bishop, Co Kirkwood, Sgt Green, Ikon's McEwen 09A 3372, Bazon 09A 1331. The Supporting Documentation regarding CIT# 240490. The memo written by Sgt Rogalsky, the area Supervisor. Conclusion of RN Smith's report regarding injury to Ikon Ramsey 91B2334. Medical Docs. Confidential information supplied by Interview with Co Grubel. Inmate's admission of guilt to charge 102.10.11A for second report. Inmate's impression that he must not engage in aggressive or violent behavior. This was a serious injury causing permanent disfigurement to inmate Ramsey 91B2334 while the incident was not witnessed by staff. Confidential testimony was reliable and credible establishing sufficient evidence to properly identify inmate DeJesus as his assailant. This behavior will not be tolerated. This inmate has a prior discipline history of similar charges and continues to use

B. REASONS FOR DISPOSITION:

C. SPECIAL INSTRUCTION ON CORRESPONDENCE RESTRICTIONS AND REFERRALS

D. SUPPLEMENTAL DATA ENTRY:

1. WAS INMATE FOUND GUILTY OF ASSAULT? (100.10, 100.11, OR 100.12) YES ☒ NO ☐

FOR THE FOLLOWING, USE CODES FROM UI REPORTING SYSTEM (DIR. #4004):

2. DID INMATE USE A WEAPON? YES ☒ NO ☐ IF YES, TYPE USED unrecovered 983. DID INMATE CAUSE INJURY? YES ☒ NO ☐ IF YES, DEGREE CODE Serious 03

Violence to further his objectives. The inmate must be charged to staff for the protection of staff and inmates as well as to ensure to safe operations of the facility.

E

HEARING OFFICER: Alright. Well, there's nothing in the log book. I don't know. I don't know what else to tell ya.

INMATE DEJESUS: Don't worry about it.

HEARING OFFICER: Alright?

INMATE DEJESUS: Let's move on.

HEARING OFFICER: Um, (on the phone)
Hey, this is Captain Chutney. Have you got Officer Kirkwood around there?
Gym door. (INAUDIBLE) Alright. That's where he's at? Okay. Thank you.
Hey, Officer Kirkwood, Captain Chutney, how are you doing. Hey, gotta put you on tape to get your testimony from ya.
Alright? Officer Kirkwood, can you hear me okay?

* [OFFICER KIRKWOOD:] *

HEARING OFFICER: You're on speaker phone. The tape recorder is on. Inmate DeJesus is in the room. Do you have a minute to give some testimony?

OFFICER KIRKWOOD: Uh, yeah.

HEARING OFFICER: Okay. You've been called....can you state your name and your title for the record, please?

OFFICER KIRKWOOD: Officer Kirkwood

HEARING OFFICER: Officer Kirkwood?

OFFICER KIRKWOOD: Yes

HEARING OFFICER: Okay. You been called by inmate DeJesus, uh, we're conducting a Tier III Hearing. Back on the 10th of February, he received a misbehavior report written up by Officer Gould and charge with assault, weapon, violent conduct, creating disturbances, fighting. Um, inmate Dejesus has requested that you testify. You might be able to answer some questions for him. Go ahead and ask your first question of the Officer.

INMATE DEJESUS: When you working on February 1st, 2015?

HEARING OFFICER: Were you working February 1st, 2015?

OFFICER KIRKWOOD: I don't know. I'll have to check.

HEARING OFFICER: Will you take a quick peak and check?

OFFICER KIRKWOOD: February 1st, 2015?

HEARING OFFICER: Yep

OFFICER KIRKWOOD: No

HEARING OFFICER: You were off?

OFFICER KIRKWOOD: Yeah.

HEARING OFFICER: Okay. He was off February 1st, 2015.

OFFICER KIRKWOOD: That was a Sunday? Yeah, I was working.

HEARING OFFICER; You were working.

OFFICER KIRKWOOD: Yeah.

HEARING OFFICER: Okay. You were working February 1st?

OFFICER KIRKWOOD: Yeah

HEARING OFFICER: Correction. He was working February 1st.

INMATE DEJESUS: He was working at the gym,,, at the gym door...

HEARING OFFICER: Do you remember where you, what post you were covering on the day?

OFFICER KIRKWOOD: At what time?

HEARING OFFICER: What time?

INMATE DEJESUS: About approximately 1:45.

HEARING OFFICER: 1:45 p.m.

OFFICER KIRKWOOD: I was at the door.

HEARING OFFICER; Where's that?

OFFICER KIRKWOOD: Gym door.

HEARING OFFICER: You would have been at the gym door.

Okay. Next question.

INMATE DEJESUS: Um, can you tell me what would be the duty working at the gym door entry post?

HEARING OFFICER: What are you looking for specifically?

INMATE DEJESUS: You know, what he, what he suppose to do at the gym door. Uh...

HEARING OFFICER: What are you looking for? (INAUDIBLE)
What you looking for him?

OFFICER KIRKWOOD: What do I look for...

HEARING OFFICER: No, no, no.. stand (INAUDIBLE) Officer. I'll get with you in a minute.

INMATE DEJESUS: Because, if he was at the gym door duty, uh, uh, on the door that day, he could of seen...

HEARING OFFICER: Okay. Ask him that? How about we ask him that.

INMATE DEJESUS: Um, did you see, did you witness, uh, a inmate being assaulted on the gym door entry post?

HEARING OFFICER: Did you see an inmate, on that date, February 1st, 2015, approximately 1:45, uh, assaulted or know of one being assaulted or be part of an incident?

OFFICER KIRKWOOD: No

INMATE DEJESUS: Would you say it would be noticeable if you seen at the gym door entry post, two inmates engaged on fighting or an inmate assaulting another inmate?

HEARING OFFICER: If it was outside of the gym door, right?

INMATE DEJESUS: Right

HEARING OFFICER: Alright. Outside of the gym door if an incident occurred there, would that be something that you would be able to observe or see?

OFFICER KIRKWOOD: If it was directly in front of the door, possibly.

HEARING OFFICER: Yeah

OFFICER KIRKWOOD: (INAUDIBLE)

HEARING OFFICER: Where, what's your post like, where, describe your post.

OFFICER KIRKWOOD: I stand inside the door. (INAUDIBLE) *Looking*
outside the door.

HEARING OFFICER: Are there windows where you can outside?

OFFICER KIRKWOOD: Yeah

HEARING OFFICER: So, if you looked out a window you could see something, right?

OFFICER KIRKWOOD: Yeah, if I looked out a window I...

HEARING OFFICER: Alright. So, only if you looked out the window he'd see something.

INMATE DEJESUS: Uh, huh

HEARING OFFICER: His advantage point. Next question.

INMATE DEJESUS: Um, did you see, did you see me fighting?

HEARING OFFICER: Did you see inmate DeJesus fighting?

OFFICER KIRKWOOD: No

INMATE DEJESUS: Did you see me, uh, creating a disturbance?

HEARING OFFICER: Did you see inmate DeJesus creating a disturbance?

OFFICER KIRKWOOD: No

INMATE DEJESUS: Did you see me on violent conduct?

HEARING OFFICER: Well, we don't need to go through every single charge. I think we get the point. Did you see inmate DeJesus conducting any type of violent behavior?

OFFICER KIRKWOOD: (INAUDIBLE) No

HEARING OFFICER: No

INMATE DEJESUS: No further questions.

HEARING OFFICER: Alright. Thank you. Goodbye.

INMATE DEJESUS: I don't understand. This, this, this is what I don't understand, Captain Chutney, that

Officer's right there where this suppose to be happening and...

HEARING OFFICER:

Well, it think that's what it says. I mean, I mean that's the, that's the whole I, that's what, that's what basically what the ticket says.

INMATE DEJESUS:

If I'm standing at the line.

HEARING OFFICER:

Yeah

INMATE DEJESUS:

And you...

HEARING OFFICER:

Otherwise if a Correction Officer saw what occurred, what Officer Gould has written, there would have been, they would have written the misbehavior report.

INMATE DEJESUS:

But, but. I understand that but don't, don't that make sense if a Officer at his post and he can see all the inmates outside. Don't, don't, don't that make sense that it happened?

HEARING OFFICER:

Well, I would hope that they would see things.

INMATE DEJESUS:

Right

HEARING OFFICER:

I mean, that's what they're here for. That's what we're paying them for.

INMATE DEJESUS: Right

HEARING OFFICER: That don't mean that they see everything.
Um, we'd like that. Ultimately, that's what
we're looking for. Are we still calling
Officer Bishop?

INMATE DEJESUS: Uh, yes.

HEARING OFFICER: And we're calling, and Officer Grady.

INMATE DEJESUS: Yes. Uh, Sergeant, uh, Grady?

HEARING OFFICER: Officer Grady.

INMATE DEJESUS: Grady is the, uh, Grady is the door, uh, he's
in the...

HEARING OFFICER: (on phone)
Hey, this is Captain Chutney again. Is Grady
over there too? Is he right there? Alright.
Can I, have him use the.... Okay. Hey, this
is Captain Chutney, how ya doing? I want to
get some testimony from you. Uh, inmate
DeJesus has requested that you testify.
Alright? Ready? Okay.
Officer Grady can you hear me okay?

OFFICER GRADY: Pardon

HEARING OFFICER: Can you hear me okay?

OFFICER GRADY: Yeah

F

Documents Needed

11/1/17

(1) + Directive ~~4932~~ "Rule Book" - GIVEN

(2) + Directive 4932 IS CHAPTER V.

(3) + Chapter 5 ANNATIONS GIVEN

(4) + Copies of MAIN yard videos C-Block, E-Block ~~NO VIDEO OF INCIDENT~~

(5) + Copies of Gym entrance Post Log Book DATED 2-1-15 Appx
~~(6) +~~ and the NAMES of the officers ^{CO 3 KIRKWOOD, GRADY} that was working
~~(7) +~~ that Post that Day! & NAME of officers that was
 working in the E-Block Post that Day 2-1-15 Appx 1:45 PM.
 GYM ENTRANCE DOES NOT HAVE A LOG BOOK

(6) TO - FROM'S Reports - GIVEN

7- copy of the ongoing ^{NO ONGOING INVESTIGATION YET GIVE} investigation Reports

8- Copy's of Memorandum Reports from the writer to
 another official such as the Watch Command.
 Dep. Superintendent for security ^{TO FROM'S GIVEN} OR Hearing of

9- Copy's of C-Block Log Book DATED 2-5-15 ~~NAME~~
 of the officers Relievers that was working on

2ND R KNIGHT
 3RD S KELLY
 14TH CO (LANGTREE) C-14- & 17 cum AT Approx 8:00 AM. & 9:00 AM
 ARCH BATE
 CO FARMER and Approx 10:02 REPORT DATED 2-1-15 AND 2-10-15 REQUEST
 MUST RELATE TO MISBEHAVIOR REPORT.

"Library"

10 The time & DATE: 2-5-15 2-1-15
 Copies of the Book NAME I TOOK OUT
 and Time when I TOOK it OUT.

REPORTS DATED 2-1-15 AND 2-10-15 MUST
 RELATE TO MISBEHAVIOR REPORT.

ON 2-1-15 TOOK OUT BOOK: OSOGBO
 SPEAKING TO THE SPIRIT OF MISFORTUNE.

NO TIME

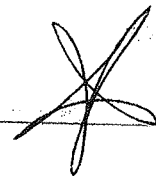
(Cell's)	INMATES witnesses
C-14-16	YES
C-14-17	YES
C-14-32	Move to A-Block 2-5-2015 REFUSED
C-14-36	REFUSE

"Officers"

- 1- officer R. knight - Frisked cell C-14-18
- 2- officer Bishop - witnesses the Frisked C-
- 3- officer M. Gould Report



INMATE ~~REPORT~~



C-14-32 - Move TO A-Block

INMATE - That was on C-14-32 DATED: 2-5

ask him what happen on 2-5-15 when he wa
celled in C-14-32 that he had came back from
the messhall what happen to his Radio? OR
what do he think happen was his Radio took
and how he Believe it was taking?

Exhibit ~~1~~Interview witnesses

ASK Inmate witnesses if they will provide A written STATEMENT of their knowledge of the situation:

Cell

C-14-17 = Ask TO Please Provide A written STATEMENT about the DATE 2-5-15 when officer knight, officer Bishop, and officer M. Gould came up TO my Cell and Frisked my Cell and what officer knight STATED the Friske was for? did officer knight STATED that the Inmate C-14-32 Told them that I took his Radio?

Cell

C-14-16 = was you in your cell the DAY Inmate Dejesus ~~was~~ Cell was Friske By officer knight, officer Bishop and M. Gould on 2-5-15 and what officer knight STATED TO Inmate Dejesus the Frisk was for and why did officer knight Told Dejesus that Inmate that locker in C-14-32 Told them that I took hi Radio? Please write A STATEMENT on what he witness and why the Friske was Done! -

G

AUBURN CORRECTIONAL FACILITY
ASSISTANT FORMMUST BE RETURNED BY: 2/16/15

TO:

FROM: DISCIPLINARY OFFICE

You have been selected to assist DEJESUS R. BA0084 SH-12 in a
 (Offender's Name) Din # Location
 pending Tier 3 for a misbehavior report dated 2/10/15.

Pursuant to Section 251-4.2 of Chapter V, your role is to ensure that the offender understands the charges, interview potential witnesses identified by the offender, and report the results of your efforts to the offender. You may also be requested to obtain relevant documentary evidence to assist in the preparation of the offender's defense to the charges.

TO BE COMPLETED BY ASSISTANT:

I initially met with this offender on 2-12-15 at 1:30 PM.
 Date Time

He has requested the following offenders to be interviewed as potential witnesses:

NAME	DIN #	LOCATION	AGREES TO TESTIFY	
MOONEY	06A3386	E-3-11 C-14-32	MOVED TO E-BH Yes	No <input checked="" type="checkbox"/>
MCEWEN	09A3372	C-14-16	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
BRAYN	09A1331	C-14-17	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
RAMSEY	91B2334	C-14-36 PC UNIT	MOVED TO Yes	No <input checked="" type="checkbox"/>

He has requested the following other persons to be interviewed as potential witnesses:

CO R. KNIGHT CO Van der Waard
 CO P. Bishop CO Langley - 2-3 steps C-14-17 relief CO Grady
 CO M. Gould CO Wright C Black lets in 14-17
 5242

___ WANTS VIDEO: YES/NO (IF YES, I HAVE FILLED OUT VIDEO REQUEST FORM)

___ REQUEST TO REVIEW URINALYSIS OPERATOR'S MANUAL: YES/NO (IF YES, NOTIFY DISCIPLINARY LT. TO SCHEDULE REVIEW)

OTHER REQUESTS

ACTION TAKEN

RECEIVED	
RULE BOOK	GIVEN TO INMATE
CHAPTER VI	" " "
MAIN YARD VIDEO	NO VIDEO
Gym ENTRANCE LOG BOOK	NO GYM ENTRANCE LOG BOOK
TO FROM	GIVEN TO INMATE
VI REPORT	" " "

TO BE COMPLETED AT CONCLUSION OF ASSISTANCE

I have interviewed witnesses and assisted as requested and reported the results to the offender charged.
 I have also attached copies of everything that was given to the offender for this assistance.

Assistant's Signature: R. Stanton Date: 2/16/15 Time: 12:35

Offender Signature: X [Signature] Date: 2-16-15 Time: 12:45 pm

Offender Refused to Sign. Witnessed by: _____

H

WITNESS INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)Arbiter

Correctional Facility

Deroses, R

Inmate Name (Print)

12A 0084

DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

CO Kirkwood

Requested witness:

- ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 2/18/15 - 3/26/15

Explanation:

gave testimony via speaker phone
while on duty due to stock shortage

Co Farmer

Requested witness:

- ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 3/26/15

Explanation:

gave testimony via speaker phone
while on duty. also through video conf.
Co Farmer was at Auburn CF while inmate
was in Southport.

Co Grady

Requested witness:

- ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 3/28/15 - 3/26/15

Explanation:

gave testimony via speaker
phone while on duty

Signature

Hearing Officer

unable to sign

Inmate

DIN

3/26/15

Date Received

WITNESS INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)

Arbun Correctional Facility
Degesis, R 12 AUG 17
Inmate Name (Print) DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

J/M McEwen 09A3372
Requested witness: ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 2/8/15 Explanation: Testimony taken via speaker phone from General Population for Security Concerns

J/M Bayan 09A1331
Requested witness: ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 2/10/15 Explanation: Testimony taken via speaker phone from General Population for Security Concerns

CD Knight
Requested witness: ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 2/8/15 - 3/26/15 Explanation: Gone Testimony via speaker phone while on Duty due to Staff Shortage

Signature [Signature] Unable to Sign 3/26/15
Hearing Officer Inmate DIN Date Received

WITNESS INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)

Arbiter Correctional Facility
Dogson, R 12A0054
Inmate Name (Print) DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

Co Bishop
Requested witness: ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 3/26/15 Explanation: gave testimony via video
Call from Auburn CF.

Requested witness: ☐ Permission to call the requested witness is denied.
☐ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: _____ Explanation: _____

Requested witness: ☐ Permission to call the requested witness is denied.
☐ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: _____ Explanation: _____

Signature [Signature] Unable to Sign 3/26/15
Hearing Officer Inmate DIN Date Received

WITNESS INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)

Arbun Correctional Facility
Dogesus, R 1240084
Inmate Name (Print) DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

Confidential information
Requested witness: ☒ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☒ Inmate is not permitted to review requested witness's testimony.
Date: 3/8/15 Explanation: Took testimony with Co Could
in confidence regarding his confidential
information and investigation.

Video Conf.
Requested witness: ☐ Permission to call the requested witness is denied.
☐ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.
Date: 3/26/15 Explanation: Last day of hearing was
conducted via Video Conference. All I/m
Dogesus 1240084 was in Southport C.F. and
was transferred to Southport C.F. while hearing
was still being conducted. I/m could view all
staff during hearing and staff could view the inmate.

Co T. McCarty
Requested witness: ☐ Permission to call the requested witness is denied.
☐ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.
Date: 3/26/15 Explanation: gone testimony on video
call from Arbutus C.F.

Signature [Signature] unable to sign 3/26/15
Hearing Officer Inmate DIN Date Received

I

NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS -- BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

JOSEPH BELLNIER
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: DEJESUS, ROBERTO

NO. 12A0084

HEARING FACILITY: SOUTHPORT

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF
MARCH 26, 2015, HAS BEEN REVIEWED AND AFFIRMED ON JUNE 11, 2015.

D. VENETTOZZI
DIRECTOR, SPECIAL HOUSING/
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT
CENTRAL OFFICE FILES
E. WATKINS PRICE, PLS ITHACA

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL
HOUSING/INMATE DISCIPLINE PROGRAM.

✓

AUBURN GENER

TAPE NUMBER 15-233

DIN: 12A0084 NAME: DEJESUS, ROBERTO

LOCATION: SH-UI-002 (4 tapes)

INCIDENT DATE & TIME: 02/01/15 01:45 PM TIER 3

REPORT DATE: 02/10/15

REVIEW DATE: 02/10/15 BY: LT FASCE, J J

DELIVERY DATE & TIME: 2/11/15 10:15 AM BY: CO E. Lupo

HEARING START DATE & TIME: 2/18/15 1:40 PM BY: Capt Clunty

HEARING END DATE & TIME: 3/26/15 10:40 AM BY: Capt Clunty

WAS THERE NEED FOR A FORMAL MENTAL HEALTH/INTELLECTUAL CAPACITY ASSESSMENT? Y / ☒ N
 DOES THIS MISCONDUCT MEET THE CRITERIA FOR WORKPLACE VIOLENCE? ☒ Y / ☐ N

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	DISPOSITION
104.11	VIOLENT CONDUCT	CO GOULD, M E	Guilty
104.13	CREATING A DISTURBANCE		Guilty
100.10	ASSAULT ON INMATE		Guilty
100.13	FIGHTING		Guilty
113.10	WEAPON		Guilty
102.10	THREATS	CO KNIGHT, R M	Guilty

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY CODE	DESCRIPTION	PENALTY MO <u>DAYS</u>	START DATE	RELEASE DATE	SUSPEND MO DAYS	DEFERRED MO DAYS	RESTITUTION \$\$\$\$. 00
Adm	Shr	730	8/25/15	8/26/17	0	0	
For	Package	730	↓	↓	↓	↓	
For	Commission	730	↓	↓	↓	↓	
For	Phone	730	↓	↓	↓	↓	
For	Confinement	365					

K

NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

JOSEPH BELLNIER
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: DEJESUS, ROBERTO

NO. 12A0084

HEARING FACILITY: SOUTHPORT

ON BEHALF OF THE COMMISSIONER, PLEASE BE ADVISED THAT YOUR
SUPERINTENDENT'S HEARING OF MARCH 26, 2015, HAS BEEN REVIEWED AND
ADMINISTRATIVELY REVERSED ON JANUARY 9, 2017.

COMMENCE AND COMPLETE REHEARING WITHIN 14 DAYS OF RECEIPT OF THIS
NOTICE.

A. RODRIGUEZ
ACTING DIRECTOR, SPECIAL HOUSING/
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT
CENTRAL OFFICE FILES

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL
HOUSING/INMATE DISCIPLINE PROGRAM.

A large, stylized handwritten signature in the bottom left corner of the page.A small, handwritten mark or signature in the bottom center of the page.

NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

JOSEPH BELLNIER
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

M E M O R A N D U M

TO: SUPERINTENDENT
ATTICA CORRECTIONAL FACILITY

FROM: A. RODRIGUEZ, ACTING DIRECTOR
SPECIAL HOUSING/INMATE DISCIPLINE

DATE: JANUARY 9, 2017

RE: REVERSAL OF SUPERINTENDENT'S HEARING

<u>INMATE/NUMBER</u>	<u>DATE OF HEARING</u>	<u>DATE OF INCIDENT</u>
DEJESUS, ROBERTO #12A0084	MARCH 26, 2015 BY CHUTTY @ SOUTHPORT C.F.	FEBRUARY 1, 2015

THE ABOVE-NOTED SUPERINTENDENT'S HEARING HAS BEEN REVERSED AND A REHEARING ORDERED ON JANUARY 9, 2017, FOR THE FOLLOWING REASON(S):

PER THE STATE OF NEW YORK SUPREME COURT, APPELLATE DIVISION THIRD JUDICIAL DEPARTMENT DATED DECEMBER 15, 2016 REHEARING THE MISBEHAVIOR REPORT WRITTEN BY C.O. M. GOULD. THE MISBEHAVIOR REPORT WRITTEN BY C.O. KNIGHT HAS BEEN UPHELD. REHEAR W/IN 14 DAYS

PLEASE DO NOT HESITATE TO SHARE THIS INFORMATION WITH THE HEARING OFFICER WHO CONDUCTED THE HEARING OR ANY OTHER APPROPRIATE STAFF MEMBER.

NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

JOSEPH BELLNIER
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

TO: INMATE RECORDS COORDINATOR
ATTICA CORRECTIONAL FACILITY

FROM: A. RODRIGUEZ, ACTING DIRECTOR
SPECIAL HOUSING/INMATE DISCIPLINE

DATE: JANUARY 9, 2017

RE: EXPUNGEMENT OF RECORDS - REHEARING

INMATE NAME: DEJESUS, ROBERTO

NUMBER: 12A0084

HEARING DATE: MARCH 26, 2015

CONDUCTED BY: CHUTTY
@SOUTHPORT C.F.

THE ABOVE-NOTED SUPERINTENDENT'S HEARING WAS REVERSED ON
JANUARY 9, 2017, AND A REHEARING ORDERED. THE RECORDS RELATED TO THE
REVERSED HEARING SHOULD BE EXPUNGED. HOWEVER, THE ORIGINAL MISBEHAVIOR
REPORT AND OTHER DOCUMENTARY EVIDENCE WHICH MAY BE UTILIZED IN THE
REHEARING DO NOT HAVE TO BE EXPUNGED.

PLEASE OBTAIN ALL REQUIRED RECORDS WITHIN 14 DAYS OF RECEIPT OF THIS
MEMORANDUM. AFTER ACCUMULATING SUCH RECORDS, PLEASE FORWARD THEM WITH A
TRANSMITTAL MEMORANDUM IN ACCORDANCE WITH THE ESTABLISHED PROCEDURES.

DO NOT SEND TAPES - RETAIN ON FILE AND MARK AS EXPUNGED.

IF THE RECORDS ARE NOT AVAILABLE AT YOUR FACILITY, PLEASE ADVISE THIS
OFFICE AS SOON AS POSSIBLE USING THE FOLLOWING SPACE.

TO: SPECIAL HOUSING/INMATE DISCIPLINARY PROGRAM UNIT

FROM:

DATE:

REASON FOR INABILITY TO COMPLETE EXPUNGEMENT: _____

COPY TO EXPUNGEMENT FILE

CC: IRC, SOUTHPORT CF (TAPE)

O. DEMUTH, AG/NYS

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 15, 2016

522255

In the Matter of ROBERTO
DEJESUS,
Petitioner,
v.

MEMORANDUM AND JUDGMENT

DONALD VENETTOZZI, as Acting
Director of Special Housing
and Inmate Disciplinary
Programs,
Respondent.

Calendar Date: October 25, 2016

Before: Peters, P.J., McCarthy, Rose, Mulvey and Aarons, JJ.

Robert Dejesus, Attica, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Owen Demuth
of counsel), for respondent.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of the Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

Petitioner was charged in a misbehavior report with assault on an inmate, possessing a weapon, creating a disturbance and fighting. As he was being escorted to the special housing unit following the issuance of the misbehavior report, he threatened the escorting correction officers, resulting in him being charged in a second misbehavior report with making threats. At a combined tier III disciplinary hearing on both reports,

-3-

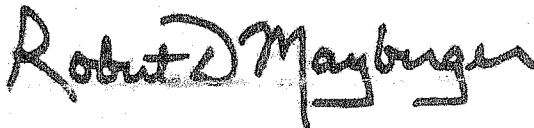
522255

determination of guilt with respect to the charges in the first misbehavior report must be annulled and the matter remitted for a new hearing (see Matter of Sorrentino v Fischer, 106 AD3d 1309, 1310 [2013], appeal dismissed 22 NY3d 1060 [2014]; Matter of Dickerson v Fischer, 105 AD3d 1232, 1232 [2013]).

Peters, P.J., McCarthy, Rose, Mulvey and Aarons, JJ.,
concur.

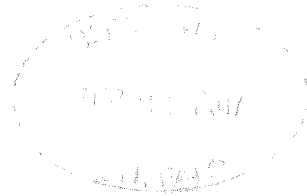
ADJUDGED that the determination is modified, without costs, by annulling so much thereof as found petitioner guilty of assault on an inmate, possessing a weapon, creating a disturbance and fighting; petition granted to that extent and matter remitted to the Commissioner of Corrections and Community Supervision for further proceedings not inconsistent with this Court's decision; and, as so modified, confirmed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style. The first name "Robert" is written in a larger, more prominent script, and "D. Mayberger" follows in a similar but slightly smaller script.

Robert D. Mayberger
Clerk of the Court

ROBERTO DeJESUS 1280084
ATTICA Corr Facility
P.O. BOX 149
ATTICA N.Y. 14011-0149



TO: Un.
200
2 Ni
Bufr

Legal Mail

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS ROBERTO DeJESUS #12A0084DEFENDANTS Captain Chutney,
Donald Venetozzi(b) County of Residence of First Listed Plaintiff Wyoming
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Cayuga
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Pro-Se PrisonerUnknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DJWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

§ 1983
Wrongful Confinement in S.H.U

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$ 150.00 A DAY CHECK YES only if demanded in complaint:For 18 months in S.H.U JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6-12-17Robert DeJesus Pro-se

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFF

JUDGE

MAG. JUDGE